

4-26-2016

State v. Savage Appellant's Reply Brief Dckt. 43474

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Savage Appellant's Reply Brief Dckt. 43474" (2016). *Not Reported*. 2703.
https://digitalcommons.law.uidaho.edu/not_reported/2703

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43474
)	
v.)	BONNEVILLE COUNTY NO.
)	CR 2014-16735
MELVIN JEREMY SAVAGE,)	
)	APPELLANT'S
Defendant-Appellant.)	REPLY BRIEF
)	

STATEMENT OF THE CASE

Nature of the Case

Melvin Savage appeals, contending the district court abused its discretion when it imposed and executed his sentence and by not further reducing his sentence pursuant to his I.C.R. 35 (*hereinafter*, Rule 35) motion for leniency. The State responds, asserting the district court did not abuse its discretion in the initial imposition of sentence. As to the Rule 35 claim, The State contends the new evidence Mr. Savage presented in support of his motion was not proper for a Rule 35 claim, but rather, spoke to a *habeas* claim. The State's response on that issue demonstrates a misunderstanding of the nature of Mr. Savage's claim, as well as the controlling law.

Therefore, it should be rejected. As that is the State's only argument on the Rule 35 issue, this Court should grant Mr. Savage relief on that ground, at least.

Statement of Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Savage's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

- I. Whether the district court abused its discretion when it initially imposed and executed Mr. Savage's sentence.
- II. Whether the district court abused its discretion when it refused to further reduce Mr. Savage's sentence pursuant to his Rule 35 motion.

ARGUMENT

I.

The District Court Abused Its Discretion When It Initially Imposed And Executed Mr. Savage's Sentence

The State's response as to the initial imposition and execution of Mr. Savage's sentence is not remarkable. In fact, it adds nothing to the discussion, as it simply adopts the district court's statements as its argument on appeal. (Resp. Br., p.3.) Since Mr. Savage already explained the problems in the district court's statements in that regard, he simply refers the Court back to pages 7-10 of his Appellant's Brief.

II.

The District Court Abused Its Discretion When It Refused To Further Reduce Mr. Savage's Sentence Pursuant To His Rule 35 Motion

Mr. Savage contends that he presented new evidence, unavailable at the time of sentencing, which proved the prediction Dr. Landers made in his testimony at the sentencing hearing – that the district court should suspend Mr. Savage's sentence because rehabilitation efforts during incarceration would not be effective in his case – was correct. Specifically, Mr. Savage presented evidence that he had been unable to make progress in the minimal rehabilitation programs afforded to him during his incarceration. (See, e.g., Rule 35 Tr., p.24, L.24 - p.25, L.16 (explaining that, while AA and faith-based programs were available at the jail, Mr. Savage was unable to progress through those programs because of the other people in his unit).)

The State, relying on *State v. Sommerfeld*, 116 Idaho 518, 520 (Ct. App. 1989), contends that this is not proper evidence under Rule 35, but rather, speaks to a *habeas* argument – that he was being denied access to rehabilitative programs. (Resp. Br., p.4.) The State's contention misunderstands Mr. Savage's argument and the relevant precedent, and so, should be rejected.

In Idaho, there is a distinction between arguments claiming that a person has been denied access to treatment while incarcerated and arguments about his progress in treatment programs during incarceration. The former are properly left to *habeas* petitions. *Sommerfeld*, 116 Idaho at 520. However, as the Court of Appeals has reaffirmed as recently as 2013, the latter may properly be raised pursuant to Rule 35. *State v. Martinez*, 154 Idaho 940, 949 (Ct. App. 2013) ("The judge may consider . . . any

new information concerning the defendant's rehabilitative progress in confinement” under a Rule 35 motion).

Mr. Savage’s Rule 35 argument does not fall into the former category because, notably, he acknowledged programs were available to him. (See Rule 35 Tr., p.24, L.24 - p.25, L.16 (noting that AA and faith-based programs were available at the jail).) As such, his argument cannot logically fit under the *Sommerfeld* rule about “the lack of prison programs available to him.” *Sommerfeld*, 116 Idaho at 520.

Rather, Mr. Savage’s Rule 35 argument falls into the latter scenario, as it discusses his inability to progress in the programs offered. Such an argument is squarely in the scope of Rule 35, as “[t]he judge may consider . . . any new information concerning *the defendant’s rehabilitative progress in confinement.*” *Martinez*, 154 Idaho 949 (emphasis added). “It would ill serve the purpose of a Rule 35 motion to preclude the defendant from presenting fresh information about himself or his circumstances.” *State v. Torres*, 107 Idaho 895, 898 (Ct. App. 1984). Therefore, under the proper rule, Mr. Savage has presented the requisite new evidence in support of his Rule 35 motion.

Since the State’s response to that argument is mistaken and it offered no other reason to reject Mr. Savage’s claim on the Rule 35 issue, this Court should grant relief on that issue.

CONCLUSION

Mr. Savage respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 26th day of April, 2016.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MELVIN SAVAGE
INMATE #115272
ISCI
PO BOX 14
BOISE ID 83707

DANE H WATKINS JR
DISTRICT COURT JUDGE
EMAIL BRIEF

TRENT GRANT
BONNEVILLE COUNTY PUBLIC DEFENDER
EMAIL BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL - CRIMINAL DIVISION
EMAIL BRIEF

_____/s/_____
MARY ANN LARA
Administrative Assistant

BRD/mal